

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

DRB CAPITAL, LLC,

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§

§

VS.

§ Case No. 4:15cv795

§

TYLER WADE

§

**MEMORANDUM OPINION AND ORDER GRANTING APPLICATION FOR
APPROVAL OF TRANSFER OF STRUCTURE ANNUITY BENEFITS AND
ORDER CLOSING CASE**

Pending before the Court is DRB Capital, LLC’s Application for Approval of Transfer of Structured Settlement Annuity Benefits (“Application”) (*see* Dkt. 1). After considering the Application and the arguments presented at the hearings held on January 5, 2016 and January 28, 2016, the Court finds that DRB Capital, LLC’s Application should be **GRANTED**.

BACKGROUND AND ANALYSIS

On November 1, 1996, the District Court for the Sherman Division of the Eastern District of Texas entered an Agreed Final Judgment in the case *Deborah Wade, Individually and as Next Friend of Tyler Ross Wade, a Minor v. Kindercare Learning Centers, Inc. and Timothy Owen Waggoner*; Case No. 4:95-CV-162. In this Agreed Final Judgment, the Court granted Tyler Ross Wade the following “Periodic Payments” as personal injury damages for a tort claim:

commencing 9-1-2008, \$750.00 per month for 5 years guaranteed;
commencing 9-1-2008, \$7,500.00 per year for 5 years guaranteed;
commencing 12-1-2008, \$7,500.00 per year for 5 years guaranteed;
commencing 9-1-2013, \$1,667.00 per month for Tyler Ross Wade’s lifetime with the first 30 years guaranteed.

Dkt. 1 at 28. The Agreed Final Judgment additionally includes an “anti-assignability clause” which states that “It is further ORDERED that Plaintiffs acknowledge that the Periodic Payments cannot be accelerated, deferred, increased, or decreased by the Plaintiffs or any payee; nor shall the Plaintiffs or any payee have the power to sell, mortgage, encumber or anticipate the Periodic Payments or any part thereof by assignment or otherwise.” *Id.* The judgment defines Plaintiffs as “DEBORAH WADE, Individually and as Next Friend of Tyler Ross Wade, a minor.” *Id.* at 27.

On or about August 19, 2015, Tyler Ross Wade, who is no longer a minor, willingly and voluntarily entered into an Absolute Sale and Security Agreement with DRB Capital, LLC (“DRB”), which is a limited liability company under the laws of the state of Delaware with its principal place of business in the state of Florida. In this Absolute Sale and Security Agreement, Tyler Ross Wade agrees to sell to DRB a portion of his structured annuity benefits that were created by the previously discussed Agreed Final Judgment in Case No. 4:95-CV-162. Specifically, Tyler Ross Wade has agreed to sell 108 monthly payments of \$1,667.00 commencing on or about December 1, 2015 and ending on or about November 1, 2024 to DRB for a lump sum cash payment.

Because the Agreed Final Judgment in Case No. 4:95-CV-162 includes an “anti-assignability clause,” the Issuer and Obligor of Tyler Ross Wade’s annuity, New York Life Insurance Company and New York Life Insurance and Annuity Corporation, have asked DRB to obtain consent from the Sherman Division of the Eastern District Courts of Texas for the transfer in the Absolute Sale and Security Agreement between Tyler Ross Wade and DRB. Because of this request, the current action was filed by DRB on November 17, 2015, seeking consent to the transfer of payments.

On January 5, 2016, this Court conducted a status conference on DRB's Application. Both Tyler Ross Wade and counsel for DRB were in attendance.

At the conclusion of the January 5, 2016 status conference, the Court directed DRB to provide notice of this present action to all parties to the prior suit and any other known interested parties. The Court additionally set a Prove-Up Hearing on January 28, 2016 to hear any objections to the proposal.

DRB provided notice of the current action and the Prove-Up Hearing to all parties to the prior suit and other known interested parties, including but not limited to, New York Life Insurance Company, New York Life Insurance and Annuity Corporation, Deborah Wade, Kindercare Learning Centers, Inc., Timothy Owen Waggoner, D. Joe Albright, Randall Betty, and James Patrick Fallon. None of the parties to the prior suit or any other known interested party have raised any objection to the current proposal, nor did any person or party appear at the January 28, 2016 to state an objection to the assignment.

Based upon the Application, hearings before the Court on January 5, 2016 and January 28, 2016, and the lack of objection from any interested party, the Court consents to the proposed transfer between DRB and Tyler Ross Wade. Having heard the arguments presented on the record, the Court finds that Wade is fully advised of the current value of the assigned payments and the consequences of making them and that, now that he has reached the age of majority, he should be free to assign them as proposed. Additionally, the Court consents to DRB seeking approval of the proposed transfer pursuant to the Texas Structured Settlement Protection Act contained in Chapter 141 of the Texas Civil Practice and Remedies Code.

For the foregoing reasons, DRB Capital, LLC's Application for Approval of Transfer of Structured Settlement Annuity Benefits (*see* Dkt. 1) is hereby **GRANTED**.

This matter shall be closed on the Court's docket, and all costs shall be borne as agreed by the parties.

SO ORDERED.

SIGNED this 3rd day of February, 2016.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE